



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

FEB 28 2012

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Stanley R. Crooks
Chair, SMSC Business Council
Shakopee Mdewakanton Sioux Community
2330 Sioux Trail NW
Prior Lake, Minnesota 55372

Re: Administrative Order EPA-5-11-113(a)-MN-02

Dear Mr. Crooks:

Enclosed is an executed original of the Administrative Consent Order regarding the above captioned case. Please direct any questions regarding this case to Reza Bagherian at (312) 886-0674.

Sincerely,

A handwritten signature in black ink, which appears to read "William L. MacDowell", is positioned above the typed name.

William L. MacDowell
Chief

Air Enforcement and Compliance Assurance Section (MN/OH)

Enclosure: Administrative Order EPA-5-11-113(a)-MN-02

Cc: Richard A. Duncan
Faegre Baker Daniels LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402-3901

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	EPA-5-11-113(a)-MN-02
)	
Shakopee Mdewakanton Sioux)	Proceeding Under Sections 113(a)
Community, Prior Lake, MN)	and 114(a) of the Clean Air Act,
)	42 U.S.C. §§ 7413(a) and 7314(a)
)	
_____)	

ADMINISTRATIVE CONSENT ORDER

1. This Administrative Consent Order (Consent Order) is issued to the Shakopee Mdewakanton Sioux Community (SMSC) under Sections 113(a) and 114(a) of the Clean Air Act (the Act), 42 U.S.C. §§ 7413(a) and 7314(a).

2. The Administrator of the U.S. Environmental Protection Agency (EPA) has the authority to issue an order requiring a person to comply with, among other things, Section 165 of the Act and its implementing regulations. Section 113(a) of the Act, 42 U.S.C. § 7413(a). This authority has been delegated to, among others, the Director of the Air and Radiation Division.

3. The Administrator of the EPA has the authority to require a person to, *inter alia*, submit information that is necessary to implement and enforce Section 165 of the Act and its implementing regulations. Section 114(a) of the Act, 42 U.S.C. § 7414. This authority has been delegated to, among others, the Director of the Air and Radiation Division.

4. SMSC is a federally recognized Indian tribe. SMSC has formally requested the EPA to consult and coordinate its efforts to comply with the Act, pursuant to the EPA's Policy on Consultation and Coordination with Indian Tribes created in response to Executive Order 13175. SMSC and the EPA have engaged in numerous consultations before they agreed to enter into this Consent Order.

STATUTORY AND REGULATORY BACKGROUND

5. “Indian Country” is defined as “(a) all lands within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.” 18 U.S.C. § 1151.

6. On June 19, 1978, EPA promulgated the Prevention of Significant Deterioration (PSD) regulations implementing, among other things, Section 165 of the Act. 43 Fed. Reg. 26403 (June 19, 1978). EPA revised the PSD regulations on several occasions including August 7, 1980 (45 Fed. Reg. 52,676) and December 31, 2002 (67 Fed. Reg. 80,186). These regulations are codified at 40 C.F.R. § 52.21.

7. The EPA implements the PSD regulations codified at 40 C.F.R. § 52.21 in Indian country located within the boundaries of the State of Minnesota. 40 C.F.R. § 52.21(a)(1), 40 C.F.R. § 52.1234.

8. The requirements of 40 C.F.R. § 52.21 apply to the construction of any new major stationary source or any major modification located in an area designated as attainment or unclassifiable for the National Ambient Air Quality Standards (NAAQS). 40 C.F.R. § 52.21(a)(2)(i).

9. A “major stationary source” is defined as, among other things, any stationary source that emits, or has the potential to emit, 250 tons per year (tpy) or more of nitrogen oxides (NO_x). 40 C.F.R. § 52.21(b)(1)(i)(b), 40 C.F.R. § 52.21(b)(50).

10. A “major modification” is defined as, among other things, any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of NO_x and a significant net emissions increase of NO_x. 40 C.F.R. § 52.21(b)(3)(i)), 40 C.F.R. § 52.21(b)(2)(i), 40 C.F.R. § 52.21(b)(50).

11. A significant emissions increase and significant net emissions increase of NO_x is defined as the potential to emit a rate of emissions that would equal or exceed 40 tpy. 40 C.F.R. § 52.21(b)(23), 40 C.F.R. § 52.21(b)(40), 40 C.F.R. § 52.21(a)(2)(iv)(d).

12. “Begin actual construction” is defined as among other things, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. 40 C.F.R. § 52.21(b)(11).

13. Section 165(a) of the Act, 42 U.S.C. § 7475(a), and the PSD regulations implementing Section 165(a) prohibit an owner or operator from beginning actual construction of or operating a major stationary source or major modification prior to the issuance of a permit stating that the major stationary source or modification would meet the requirements of 40 C.F.R. § 52.21(j) through (r). 40 C.F.R. § 52.21(a)(2)(iii).

14. On July 1, 2011, EPA promulgated final rules “Review of New Sources and Modifications in Indian Country.” 76 Fed. Reg. 38,748 (July 1, 2011) (to be codified at 40 C.F.R. parts 49 and 51). The final rules became effective on August 30, 2011. The rules allow, among other things, for a synthetic minor source permit to be issued to an otherwise major source that has accepted restrictions, enforceable as a practical matter, so that the source’s potential to emit is less than the emission amounts for major stationary sources or major modifications to major stationary sources.

FINDINGS

15. SMSC is a federally recognized Indian tribe.
16. SMSC is and at all times relevant to this Consent Order was a “person” as defined by Section 302(e) of the Act, 42 U.S.C. § 7602(e).
17. Since 1992, SMSC has acquired, and owns or operates the generators listed in attachment A (the “SMSC generators”).
18. The SMSC generators are located in Prior Lake, Scott County, Minnesota, an area designated as either in attainment or unclassifiable with respect to the NAAQS at all times relevant to this Consent Order. 40 C.F.R. § 81.324
19. The SMSC generators are located in Indian Country, as that term is defined at 18 U.S.C. § 1151, within the boundaries of the State of Minnesota.
20. The SMSC generators alone or in combination emit or have the potential to emit greater than 40 tpy of NO_x and/or greater than 250 tpy of NO_x.
21. The SMSC generators alone or in combination constitute major modifications and/or new major stationary sources.
22. SMSC began actual construction of the SMSC generators. SMSC operated the SMSC generators, except for Generators EU 116, EU 117 and EU 118.
23. On June 23, 2011, SMSC submitted to EPA a synthetic minor source permit application for Generators EU 116, EU 117 and EU 118 after beginning actual construction.
24. SMSC violated and continues to violate 40 C.F.R. § 52.21(a)(2)(iii) by beginning construction of and operating the SMSC generators, including Generators EU 116, EU 117 and EU 118, prior to obtaining a permit stating that SMSC generators meet the conditions of 40 C.F.R. § 52.21(j) through (r).

COMPLIANCE PROGRAM

25. On June 23, 2011, SMSC submitted to EPA a synthetic minor source permit application for Generators EU 116, EU 117 and EU 118. SMSC must continue to cooperate with the EPA for the application and issuance of the appropriate permits for Generators EU 116, EU 117 and EU 118. Prior to obtaining appropriate permits for Generators EU 116, EU 117 and EU 118, SMSC is prohibited from continuing construction and operating Generators EU 116, EU 117 and EU 118.

26. Within one (1) year after issuance of this Consent Order, SMSC must retire or submit complete and appropriate permit applications and obtain final permits for the remainder of the generators listed in attachment A that are still in operation and determined by EPA to be subject to permitting requirements. For each generator listed in Attachment A that has already been retired, SMSC must submit a certification that it has retired the generator.

27. SMSC must retire or submit complete and appropriate permit applications and obtain final permits according to the schedule provided in Attachment A.

REPORTING REQUIREMENTS

28. By the end of each calendar quarter, SMSC must submit quarterly progress reports to EPA for the actions undertaken during the previous calendar quarter. The quarterly reports must include at the minimum the following information: (i) the types of permit applications, if any, submitted to the EPA; (ii) the list of generators, identified by emissions unit, capacity and date installed, for which permit applications were submitted; (iii) the list of generators, if any, retired by SMSC and the final disposition of each generator; and (iv) the list of generators specified in attachment A that have achieved full compliance with the requirements of the Act at the end of each calendar quarter.

29. SMSC must send all reports required by this Consent Order to:

Attention: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

GENERAL PROVISIONS

30. This Consent Order does not restrict EPA's authority to enforce other sections of the Act or its implementing regulations.

31. Nothing in this Consent Order limits EPA's authority to seek appropriate relief, including penalties under Section 113 of the Act, 42 U.S.C. § 7413, for any violation by SMSC of the Act's requirements in connection with the construction and/or operation of the SMSC generators. Failure to comply with this Consent Order may subject SMSC to penalties of up to \$37,500 per day for each violation under Section 113 of the Act, 42 U.S.C. § 7413, and 40 C.F.R. Part 19.

32. SMSC stipulates that the EPA has jurisdiction over the subject matter of this Consent Order, and waives any jurisdictional defenses to EPA's enforcement of it.

33. SMSC neither admits nor denies the Findings listed above, including any violation of the Act or its implementing regulations.

34. To the extent relevant in any future proceeding between the EPA and SMSC or any other party, other than a proceeding by the EPA against SMSC to enforce the terms of this Consent Order, SMSC does not waive any argument or defense relating to the factual or legal allegations set forth herein.

35. The terms of this Consent Order are binding on SMSC, its assignees and successors. SMSC must give notice of this Consent Order to any successors in interest prior to transferring

ownership and must simultaneously verify to EPA, at the above address, that it has given the notice.

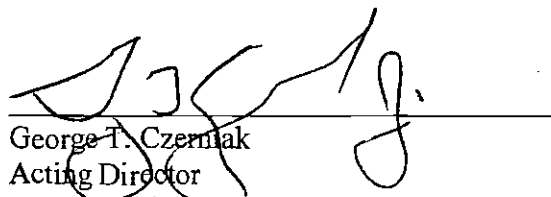
36. SMSC may assert a claim of business confidentiality under 40 C.F.R. Part 2, Subpart B, for any portion of the information it submits to EPA. Information subject to a business confidentiality claim is available to the public only to the extent allowed by 40 C.F.R. Part 2, Subpart B. If SMSC fails to assert a business confidentiality claim, EPA may make all submitted information available, without further notice, to any member of the public who requests it. Emission data provided under Section 114 of the Act, 42 U.S.C. § 7414, is not entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B. "Emission data" is defined at 40 C.F.R. § 2.301.

37. This Consent Order is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*, because it seeks collection of information by an agency from specific individuals or entities as part of an administrative action or investigation. To aid in our electronic recordkeeping efforts, please furnish an electronic copy on CD or thumb drive. If not possible, provide your response to this Consent Order without staples; paper clips and binder clips, however, are acceptable.

17 February 2012
Date


Stanley R. Crooks, Chair,
SMSC Business Council

2/27/12
Date


George T. Czerniak
Acting Director
Air and Radiation Division

Attachment A
Administrative Consent Order
SMSC Generators

EU	Month/Year Installed	Horse Power	Application Date
101	April 1992	1875	31 May 2012
102	April 1992	1875	31 May 2012
103	July 2004	3196	31 May 2012
104	December 2008	2937	31 May 2012
107	August 1993	2250	31 May 2012
108	August 1993	2250	31 May 2012
109	May 1999	2288	31 May 2012
110	June 1996	1825	31 May 2012
111	April 2006	2885	31 May 2012
112	September 2007	2937	29 June 2012
113	September 2009	2937	31 May 2012
114	September 2009	2937	31 May 2012
115	September 2009	2937	31 May 2012
116	March 2010	2937	22 June 2011
117	March 2010	2937	22 June 2011
118	March 2010	2937	22 June 2011
204	July 1994	1678	31 July 2012
211	August 2007	2885	31 August 2012
213	Not Available	864	31 July 2012
214	Not Available	864	31 July 2012

This Attachment lists generators that, if operated at 8,760 hours per year, could produce sufficient emissions to exceed minor source levels.

CERTIFICATE OF MAILING

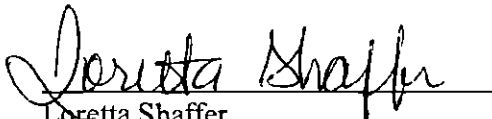
I, Loretta Shaffer, certify that I sent the Administrative Consent Order, EPA Order No.
EPA-5-11-113(a)-MN-02, by certified mail, return receipt requested, to:

Stanley R. Crooks
Chair, SMSC Business Council
Shakopee Mdewakanton Sioux Community
2330 Sioux Trail NW
Prior Lake, Minnesota 55372

and,

Richard A. Duncan
Faegre Baker Daniels LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402

on the 28 day of Feb 2012.


Loretta Shaffer
Administrative Program Assistant
AECAB/AECAS/PAS

Certified Mail Receipt Number: 70091680000076739269